89- 1473

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

MICHAEL A. SALMINEN,

PETITIONER,

vs.

CITY OF HIBBING, BY AND THROUGH THE PUBLIC UTILITIES COMMISSION IN AND FOR THE CITY OF HIBBING,

and

SPAL PARTNERSHIP, A MINNESOTA PARTNERSHIP IN LIQUIDATION,

and

MERCHANTS AND MINERS STATE BANK,

RESPONDENTS,

PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS.

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QUESTIONS PRESENTED FOR REVIEW

Were Petitioner's Constitutional civil rights denied, pursuant to Fourteenth Amendment, Section 1, United States Constitution; and Article 1, Sections 2, 4, 7 & 8 of the Minnesota Constitution, when he was deprived of his property without due process of law by the acts of Minnesota District Court Judge Joseph R. Scherkenbach as follows:

1. Is it denial of due process when Trial Court unlawfully dismissed this legal action with prejudice, without a motion for dismissal before the Court, and from a proceeding held in another action without Petitioner and his attorney being present?

2. Is it denial of due process when Trial Court issued Judgment of Dismissal without making and entering findings of fact and conclusions of law?

3. Is it denial of due process when Petitioner's right to have the facts tried by a jury was extinguished by Trial Court issuance of Judgment of Dismissal?

4. Is it denial of due process when Trial Court unlawfully denied Petitioner's NOTICE of Intervention w/Cross-Claim?

5. Is it denial of due process when Trial Court refused to dispose of Petitioner's MOTION to Intervene?

6. Is it denial of due process when Spal Partnership's attorney never filed a Summons and Complaint to establish a cause of action, and claim upon which relief can be granted?

7. Is it denial of due process under "color of state law" when Trial Court:

(a) Quashed intervening Petitioner's subpoenas duces tecum w/Notices of Taking Depositions, "and any issued thereafter"?

(b) Ordered Petitioner to pay $400.00 to Defendant, City of Hibbing, even though Petitioner was acting in good faith trying to be heard under Rules of Civil Procedure?

(c) Permitted Defendant's agents and attorneys to ignore and disregard any discovery attempts in the future by Petitioner?

8. Were Petitioner's due process rights denied by acts of misconduct by his attorney, Paquette, in case of origination, #85-0064HC?

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CITY OF HIBBING, BY AND THROUGH THE PUBLIC UTILITIES COMMISSION IN AND FOR THE CITY OF HIBBING,

and

SPAL PARTNERSHIP, A MINNESOTA PARTNERSHIP IN LIQUIDATION,

and

MERCHANTS AND MINERS STATE BANK,

RESPONDENTS,

PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS.

The pro se Petitioner, Michael A. Salminen, respectfully prays that a Writ of Certiorari, or in the alternative, other appropriate writ issue to review the Minnesota Court of Appeals Order Opinion entered September 28, 1989.

OPINIONS BELOW

Minnesota Sixth District Court entered Judgment of Dismissal on March 6, 1989. (Appendix A attached)

District Court Order dismissed instant matter with prejudice, entered January 6, 1989. (Appendix B attached)

Minnesota Court of Appeals denied Petitioner's Petition For Writ of Mandamus to compel Trial Court disposal of Motion to intervene. Entered May 3, 1989. (Appendix C attached)

Minnesota Supreme Court denied Petition For Review of Decision of Court of Appeals. Entered July 17, 1989. (Appendix D attached)

Minnesota Court of Appeals Order Opinion entered September 28, 1989, affirmed Trial Court Judgment of Dismissal. (App. E attached)

Court of last resort, Minnesota Supreme Court, entered an Order November 22, 1989, denying Petition For Review of Decision Of Court Of Appeals

(Appendix F attached)

JURISDICTION

The Minnesota Supreme Court Order entered November 22, 1989, exhausts State Court remedies. The jurisdiction of the United States Supreme Court is invoked under the Fourteenth Amendment, Section 1, United States Constitution, and/or 42 USC § 1983.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, 14th Amendment, Section 1:

"Nor shall any State deprive any person of life, liberty, or property, without due process of law" . . .

STATEMENT OF THE CASE

The instant matter originates from District Court legal action "In Re the Petition of Richard F. Spearman, Petitioner, for Dissolution of partnership of Spal Enterprise, a Minnesota Partnership", file #85-0064HC, which originates from "Merchants and Miners State Bank vs. Spal Enterprise, et al", file #C84-0558. The Bank is a party to this action for the purpose of garnishing partnership monies to satisfy a deficiency judgment originating from a judgment procured by fraud in #C84-0558. Petitioner is a co-partner with Richard F. Spearman in Spal

Enterprise, and entitled to 50% of the financial settlement amount resulting from a steam damage claim, subject matter of this action. The claim is against the City of Hibbing, by and through the Public Utilities Commission, arising out of their negligence causing steam damage to partnership property on or about May 17, 1982. The partners agreed in writing to bring a suit to recover. In disregard, Judge Joseph R. Scherkenbach issued his April 25, 1988 Order, based upon proceedings held in #85-0064HC on March 25, and April 13, 1988, appointing Robert F. Berger, attorney, to sue the matter for the partnership. (Ap. G) The appointment made partner Salminen the court-appointed client of Mr. Berger. Attorney Donald Paquette appeared on Salminen's behalf at the proceedings of March 25th and April 13th. Unknown to Salminen at the time, Paquette was unlicensed to practice law on March 25, 1988. Judge Scherkenbach knowingly permitted Paquette to appear and practice in his court. (Ap. H & I) Paquette has never informed client Salminen that he was unlicensed to practice at the time he was retained, or at times thereafter. Paquette paid his delinquent fee on April 13, 1988, allowing him to practice through June 30, 1988. Paquette appeared

on the 13th, and both he and client Salminen objected to the motion to appoint Berger to sue the claim. (Ap. J-2, lines 16-21) (Ap. N, lines 1-4) Salminen did not learn of Paquette's nonstanding to practice until September 23, 1988, and refused to appear at proceedings held in #85-0064HC.

Trial Court is in error when it states that:

"Partners and their respective counsel have agreed that Robert F. Berger shall be appointed to handle the Public Utilities claim" . . . (Ap. G-2, par. 9) Minnesota Court of Appeals is also in error per Order. (Ap. E-2, par. 2)

Berger's itemized statement for legal fees shows he was in direct and frequent contact with partner Spearman and his attorney, Richard E. Prebich. Berger prejudicially shut partner Salminen out of the settlement process, refusing to communicate and refusing to furnish Salminen with requested relevant information. Berger accepted an inadequate settlement for the partners. Salminen objected in writing to both Berger and the court. Shut out by the unfair Berger, Salminen went to the Courthouse to research the file in regard to the partnership suit against the City. NONE EXISTED. Plaintiff's court-appointed attorney had never filed a Summons and Complaint w/proof of service. Soon thereafter Berger

sent Salminen a notice dated December 7, 1988, setting a motion for hearing in #85-0064HC, for December 23, 1988. (Ap. K) The motion requested an Order to relieve Berger of duties as liquidator/ receiver. Salminen raised the question of why a Summons and Complaint had not been filed to commence the action pursuant to the Court Order and Berger's own testimony. (Ap. N-3, lines 9-15) On December 13, 1988, Dennis L. O'Toole, attorney for defendant city of Hibbing, paid the filing fee and commenced legal action "Spal Partnership v City of Hibbing, et al", file #88-11246, see (Ap. L) Third-Party M&M State Bank filed papers the same day. It became clear to Salminen that Berger was not adequately protecting his interest. That so situated Salminen that the disposition of the action may as a practical matter impair or impede his ability to protect his interest. Salminen felt compelled to pay the filing fee and intervene in #88-11246. He filed his Notice of Intervention (Ap. M), Reasons For Entitlement of Intervention w/Exhibits, and Cross-Claim against the City of Hibbing on December 22, 1988. Late in the day of December 22nd, Salminen's attorney Paquette called and told Salminen that he was unable to appear the next day in the proceeding in #85-0064HC. Salminen told Paquette to advise the

Court of his intentions. Salminen appeared at the Courthouse at 8:00 a.m. on December 23rd, informing Deputy Administrator, Lorraine Andrews, that his attorney informed him that he would not appear in #85-0064HC, and that Salminen would not appear without his counsel. There was no motion set for hearing in #88-11246 on December 23, 1988. Without Salminen and his attorney present, Judge Scherkenbach and officers of the Court Robert F. Berger, Dennis L. O'Toole, Richard E. Prebich and David T. Stall participated in a proceeding in #85-0064HC, but fraudulently state the proceeding was held in #88-11246. The transcript of the proceeding is entitled "Spal Partnership vs. City of Hibbing, et al", file #88-11246, an absolute FRAUDULENT MIS-REPRESENTATION. (Ap. N) On December 27, 1988, intervening party Salminen prepared two subpoenas duces tecum w/Notice of Taking Depositions, had one served upon Richard F. Spearman, and the other upon David Strafaccia, City of Hibbing employee, by and through its Public Utilities Commission.

It is very important that the Supreme Court Justices considering this Petition understand that Spearman was a politically-appointed Hibbing Public Utilities Commissioner, as well as a Spal partner at the time that partnership property suffered steam

damage due to HPUC negligence. Also, attorney Prebich's law firm represented the Public Utilities Commission.

The subpoenas were filed with the Court on December 29th and 30th. On January 6, 1989, only 24 days after commencement of the action, 15 days after Salminen filed his Notice of Intervention and Cross-Claim, and 8 days after the Strafaccia subpoena had been served, the Trial Court issued an Order based upon the December 23rd proceeding at which Salminen and his attorney were not present, dismissing legal action #88-11246 with prejudice. (Ap. B) On January 9, 1989, the Trial Court issued an Order denying Salminen's NOTICE of Intervention. (Ap. O) On January 11, 1989, Salminen filed an affidavit, alleging violation of Rules of Civil Procedure. (Ap. P) On January 13, 1989, City's attorney, O'Toole, served Salminen with a Notice of Objection to Intervention. On January 17, 1989, Salminen filed an affidavit alleging fraud upon the Court and violation of his Fourteenth Amendment civil rights. (Ap. Q) Judge Scherkenbach's January 25, 1989 Order quashed the Spearman subpoena "and any issued thereafter". On January 31, 1989, the Trial Court quashed the Strafaccia subpoena

ordering Salminen to pay $400.00 to the City of Hibbing, further ordering:

"Defendant and its agents, subdivisions, employees and attorneys shall be permitted at all times in the future to ignore and disregard, with no penalty or sanction to them, any discovery or purported discovery relating to the claims which are the subject matter of this lawsuit and which discovery is initiated by Michael A. Salminen or any individual acting or purporting to act on his behalf". (Ap. R)

Within 30 days following Notice of Objection to Intervention from O'Toole, Salminen timely filed his MOTION to Intervene dated February 9, 1989, setting a hearing date for March 3, 1989. (Ap. S) Salminen appeared to orally argue on the 3rd, opposing counsel did not appear, and Judge Scherkenbach refused to hear Salminen, saying the matter was resolved in its entirety. Without a written motion before the Court requesting dismissal, the Court issued Judgment of Dismissal, entered March 6, 1989. (Ap. A) Salminen sent a letter to the Court on March 14, 1989, requesting disposal of his MOTION to Intervene. Court Administrator's letter of March 17th states that the Court directed her to advise Salminen that:

"all orders to be issued in this matter have been issued and filed". (Ap. T) On April 10, 1989, Salminen petitioned the Minnesota Court of Appeals for a Writ of Mandamus to compel the Trial Court to dispose of his MOTION to Intervene. The Court of Appeals Order entered May 3, 1989, denied Petition For Writ. (Ap. C) Salminen petitioned the Minnesota Supreme Court to Review Decision of Court of Appeals. Supreme Court Order entered July 17, 1989, denied Petition For Review. (Ap. D) Trial Court refuses to dispose of MOTION to Intervene, standing in willful violation of Minnesota Statute 546.27. Salminen timely appealed Trial Court Judgment of Dismissal to the Court of Appeals. Court of Appeals Order entered September 28, 1989, affirmed Trial Court Judgment of Dismissal. (Ap. E) Petition For Review of Decision of Court of Appeals was timely filed with the Minnesota Supreme Court. Supreme Court Order entered November 22, 1989, denied Petition For Review. (Ap. F) Therefore, Trial Court Judgment of Dismissal stands as issued March 6, 1989. (Ap. A) Petitioner has exhausted State Court remedies, and no other adequate, plain and speedy remedy is available, other than the Petition For Appropriate Writ from U.S. Supreme Court.

WHEN FEDERAL ISSUE WAS RAISED

Salminen raised the Federal Fourteenth Amendment Constitutional rights issue on pages 2 & 3 of his January 11, 1989 affidavit. (Ap. P) Also, on page 3 of his affidavit of January 17, 1989. (Ap. Q) Also on page 4 of his February 9, 1989 Memorandum attached to Motion to Intervene. Trial Court did not address the Federal question because it refused to dispose of the Motion to Intervene, and did not make and enter findings of fact and conclusions of law when it issued Judgment of Dismissal. (Ap. A) Federal issue was raised in Petition For Writ of Mandamus for reason that the February 9th Memorandum was a part of the Petition. Court of Appeals Order entered May 3, 1989 denied the Petition and did not address the Federal issue. (Ap. C) The Supreme Court Order entered July 17, 1989, denied the Petition For Review and did not address the Federal issue. (Ap. D) Appellant's Brief and Appendix to the Court of Appeals again raised the Federal question. Court of Appeals Order entered the 28th of September, 1989, states in par. 6, page 2:

"The record fails to show appellant has been denied any right to due process. He has been given adequate notice and ample opportunity to respond at the various stages of these proceedings". (Ap. E)

Petitioner further raised the Fourteenth Amendment issue in regard to "color of state law" under 42 USC § 1983 on page 3 of his Petition For Review of Decision of Court of Appeals to Minnesota Supreme Court. The State Court of last resort Order entered November 22, 1989, denied Petition For Review and did not address the Federal issue raised. (Ap. F)

METHOD OF RAISING THE FEDERAL QUESTION

Pages 2 & 3 of January 11, 1989 affidavit:

"Both orders constitute an overwhelming abuse of power, and violation of the Minnesota Rules of Civil Procedure; Minnesota Statutes, Chapter 323; the Spal Enterprise Partnership Agreement; and Amendments V and XIV of the Constitution of the United States of America. Amendment XIV states in part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law" . . . (Ap. P)

Page 3 of January 17, 1989 affidavit:

"Affiant's civil rights have been violated, pursuant to Amendment XIV, Section 1, United States Constitution, in regard to the instant matter, and legal actions #C84-0558 and #85-0064HC, from whence this instant matter originates". (Ap. Q)

Page 4 of February 9, 1989 Memorandum:

"Issues germane to the instant matter originate from District Court actions #C84-0558 and #85-0064HC. In those actions, the Honorable Judges Joseph R. Scherkenbach and Mitchell A. Dubow have denied undersigned his right to have the issues of fact tried by a jury. Both Judges consistently, discriminately and prejudicially deprived Minnesota general partner, Michael A. Salminen, of his property without due process of law. (Amendment XIV, Section 1, United States Constitution) (Minnesota Statutes, Chapter 323) (Spal Enterprise Partnership Agreement) Both Judges have prejudicially thwarted Salminen's quest for discovery in the legal actions".

Page 9 of Appellant's Brief and Appendix to Minnesota court of Appeals:

"he will not be deprived, by the Courts of the State of Minnesota, of any rights that he would have had under the laws of the United States, including but not limited to, the Fourteenth Amendment to the Constitution of the United States of America".

Page 3 of Petition For Review to Minnesota Supreme Court:

"Petitioner has been wrongfully deprived of his civil rights by the Trial Court and Court of Appeals decisions, pursuant to the Minnesota Constitution,

Article 1, Sections 2,4,7 & 8; The United States Constitution, including but not limited to, the 5th Amendment and 14th Amendment, Section 1; and 42 USC § 1983".

REASON FOR GRANTING WRIT

Petitioner was born in the United States, subject to the jurisdiction thereof, and is a citizen of the United States and the State of Minnesota. Pursuant to Federal Rule 17(c), Jurisdiction on Writ of Certiorari, the Minnesota Trial and Appellate Courts decided a Federal question in a way in conflict with applicable decisions of the United States Supreme Court.

Supreme Court has jurisdiction where party in state court has claimed right or immunity under law of United States and it has been denied to him. (St. Louis I.M. & S.R. Co. v Taylor (1908) 28 S Ct 616)

Constitutional right or entitlement may be of 2 origins; It may arise directly from text of constitution as interpreted by courts, or it may arise out of substantive laws and regulations of states and be protected by due process clause of Fourteenth Amendment. (Washington v Starke (1986 WD Mich) 626 F Supp 1149)

Where a citizen of the United States has been deprived of his property without due process of law,

constitutional protection against such deprivation is available to persons arbitrarily deprived of their private rights by state action whether under guise of legislative authority or otherwise. (Phillip Wagner, Inc. v Leser (1915) 36 S Ct 66)

Deprivation of property without due process of law within meaning of Fourteenth Amendment occurs when it results from arbitrary exercise of power inconsistent with those settled usages and modes of proceeding existing in common and statute law of England before emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after settlement of this country. (Tracy v Ginzberg (1907) 27 S Ct 461)

Phrase "color of state law" whether used in context of 42 USC § 1983 or in context of its criminal counterpart, 18 USC § 242, is synonymous with concept of "state action" under Fourteenth Amendment. (Timson v Weiner (1975 DC Ohio) 395 F Supp 1344)

Municipality may be held liable under 42 USC § 1983 on basis of policy of deliberate indifference to constitutional rights of persons within its domain. (Fiacco v Rennselaer (1986 CA 2 NY) 783 F 2d 319)

Pro se complaints are to be liberally construed and not dismissed unless the plaintiff presents no set of facts under which relief might be granted. (Conley v Gibson (1957) 355 U.S. 41 45-6)

It is enough to invoke procedural safeguards of Fourteenth Amendment that significant property interest is at stake, whatever ultimate outcome of hearing. (Carey v Piphus (1978) 98 S Ct 1042)

Purpose of this rule governing discovery is to clarify and confine the issues to be litigated and to reveal to the parties and the court the existence or whereabouts of facts relative to those issues. (Carlson Co., Inc. v Sperry & Hutchinson Co. (1974 DC Minn) 373 F Supp 1080)

The purpose of modern discovery is to narrow the issues, to eliminate surprise, and to achieve substantial justice. (Greyhound Lines, Inc. v Miller (1968 CA Mo) 402 F 2d 134)

It is a scheme to interfere with the judicial machinery performing the task of impartial adjudication, as by preventing the opposing party from fairly presenting his case or defense. (Pfizer, Inc. v International Rectifier Corp. (1976 8th Cir) 535 F 2d 180, 195)

Property interests subject to procedural due process protection are not limited by a few rigid,

technical forms; rather, "property" denotes broad range of interests that are secured by existing rules or understandings. (Perry v Sindermann (1972 La) 92 S Ct 2694)

Where injury has occurred for which injured party has cause of action, such cause of action is vested property right which is protected by guarantee of due process. (Lott v Haley (1979 La) 370 So 2d 521)

An involuntary dismissal cannot be made ex-parte. Minnesota Rule 41.02(a) requires notice for a hearing on the motion.

If the court grants a judgment of dismissal on the merits of a court-tried action under 41.02, findings of fact and conclusions of law must be made and entered as required under rule 52.01 (State v Bollenbach (1954) 63 N.W. 2d 278) (Ketterer v Ind. School District No. 1 (1956) 79 N.W. 2d 428

Under Minnesota Rules of Civil Procedure 41.02(b), the court is authorized to grant a dismissal only after the plaintiff has completed the presentation of his case and it is error to grant a motion to dismiss before the plaintiff has rested. (Gittleman v Fesenmaier (1964) 128 N.W. 2d 709) (State Board of Medical Examiners v Olson (1973) 206 N.W. 2d 12)

In actions for the recovery of money only, or of specific real or personal property, the issues of fact shall be tried by a jury, unless a jury trial is waived or a reference is ordered. (Rule 38.01, Minnesota rules of Civil Procedure)

It is for jury, not for court, to determine weight to be given testimony and to decide what testimony proves. (Penteluk v Stark (1955) 69 N.W. 2d 899)

Relief from a final judgment is authorized where moving party establishes by clear and convincing evidence that the adverse party engaged in fraud, misrepresentation, or other misconduct that prevented the moving party from fully and fairly presenting its case. (Regents of Univ. of Mn. v Medical, Inc. (1987 Mn Ct of App) 405 N.W. 2d 474)

The Writ must issue so the Supreme court can review all questions of jurisdiction, power, and authority of the Trial Court to do the acts complained of. The function of the Writ is to correct substantial errors of law commited by Trial court that are not otherwise reviewable by a court. Certiorari may possibly be obtained by a person who was not a party of record but was a party in substance, if such party can show that the proceeding sought to be reviewed is directed against his person or property, and that enforcement would involve special, immediate, and

direct injury to his interests. (14 Am Jur 2d. Certiorari § 7)

SUMMARY

This case presents an outstanding example of overwhelming and wrongful use of unbridled raw judicial power exercised under judicial function by Minnesota State Court Judges. The evidence contained in all of the files and records in the instant matter, and in referenced cases of origination, clearly and convincingly demonstrate prejudicial denial of Petitioner's Constitutional rights that resulted in deprivation of his property without due process of law, pursuant to the Fourteenth Amendment, Section 1 of the United States Constitution. If justice will be served, it is imperative that the Honorable Justices of the United States Supreme Court allow the Writ, for the special and important reasons presented herein. Denial would surely signal the people of the United States and the State of Minnesota that the prejudicial administration of justice will continue, unchecked in the Courts of Minnesota District Court Judge Joseph R. Scherkenbach, the Minnesota Court of Appeals and Minnesota Supreme Court. Denial would constitute a de facto condoning of unlawful State Court acts that directly contravene the intent and

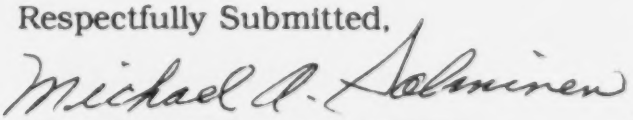
purpose of the Constitution of the United States of America.

Pro se Petitioner's limited high school education leaves him untrained in the law. He has been run out of funds by over 8 years of continuous related litigation, including the instant matter. At all times, with and without legal counsel, he has acted in good faith effort to exercise his constitutional rights within the law to fully and fairly utilize the Rules of Civil Procedure to achieve substantial justice in the Courts of the State of Minnesota. His Petition is not filed for frivolous reason or delay.

For the foregoing reasons, Petitioner respectfully requests allowance of the Writ of Certiorari, or in the alternative, other appropriate writ to review the Minnesota Court of Appeals Order Opinion entered September 28, 1989.

Dated: January 22, 1990

Respectfully Submitted,



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STATE OF MINNESOTA)
)ss
COUNTY OF ST. LOUIS)

MICHAEL A. SALMINEN, first being sworn upon an oath, states that this petition is made in good faith, is not frivolous, and is not interposed for the purpose of delay; and that the facts stated in the foregoing petition, so far as they come within his own knowledge, are true, and so far as derived from the knowledge of others, he believes them to be true.

Subscribed and sworn to before me on this 19 day of January, 1990.

Michael A. Salminen
MICHAEL A. SALMINEN

Notary Public

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF ST. LOUIS — SIXTH JUDICIAL DIST.

Spal Partnership, a Minnesota partnership in liquidation,

Plaintiff,

vs.

City of Hibbing, by and through the Public Utilities Commission in and for the City of Hibbing,

Defendant,

vs.

Merchants and Miners State Bank,

Third Party Defendant.

File No: 88-11246

ORDER FOR JUDGMENT AND JUDGMENT OF DISMISSAL

Pursuant to the Order of this court dated January 6, 1989, it is hereby ADJUDGED AND DECREED that the above-entitled action is dismissed with prejudice with respect to all parties, third parties, claims, cross-claims, and counter-claims involved therein. The Court makes no award of costs.

Let judgment be entered accordingly.

Dated: March 6, 1989.

BY THE COURT
JOSEPH R. SCHERKENBACH

STATE OF MINNESOTA — DISTRICT COURT
COUNTY OF ST. LOUIS — SIXTH JUDICIAL DIST.

In Re: The Petition of
Richard F. Spearman for the
Dissolution of Partnership of:

SPAL Enterprise,
a Minnesota Partnership,

and

Spal Partnership, a Minnesota
partnership in liquidation,

Plaintiff,

vs.

City of Hibbing, by and through
the Public Utilities Commission
in and for the City of Hibbing,

Defendant,

vs.

Merchants and Miners State Bank,

Third Party Defendant.

ORDER

File No:
85-0064HC
File No:
88-11246

DATE OF HEARING: December 23, 1988

APPEARANCES: For Attorney and Liquidator/
Receiver of Spal Enterprise:
Robert F. Berger
For Richard F. Spearman:
Richard E. Prebich
For City of Hibbing:
Dennis L. O'Toole
For Merchants and Miners State
Bank: David T. Stall

The above-entitled matters came on for hearing before the undersigned, one of the Judges of the above-captioned Court, on the 23rd day of December, 1988, at the St. Louis County Courthouse, Hibbing, Minnesota.

Based upon the Motion of Spal Enterprise, a Minnesota Partnership, and further based upon the positions of City of Hibbing and Merchants and Miners State Bank, as reflected in their respective Third-Party Complaint and Answer to Third-Party Complaint,

IT IS HEREBY ORDERED:

1. That Defendant City of Hibbing and its attorneys, Lano, Nelson, O'Toole & Fecker and Dennis L. O'Toole, immediately tender to the Court that certain draft issued by Transamerica Insurance Group payable to Spal Partnership, a Minnesota partnership in liquidation and Robert F. Berger, its attorney, in the amount of $16,500.00 and numbered 270066091.

2. That in sole consideration of tender of said draft in the amount of $16,500.00, the receipt and sufficiency whereof is hereby acknowledged by this Order, City of Hibbing, by and through the Public Utilities Commission in and for the City of Hibbing, its successors, agents, assigns and all other

persons, firms or corporations liable or who might be claimed liable for the claims asserted in Court file No. 88-11246, including without limitation all damages relating to inspection and maintenance of its steam transmission lines and condensate lines and related to damages arising on or about May 19, 1982, at premises located at 21st Street between Third Avenue and Fourth Ave. East in Hibbing, Minnesota, are hereby released and forever discharged therefrom.

3. That Court File No. 88-11246 is hereby dismissed with prejudice, but without costs.

4. The Garnishment lien of the Third party Defendant, Merchants and Miners State Bank, if any, shall be preserved for the further determination of the court, and the payment of the monies as Ordered by paragraphs numbered one and two herein to the Court shall not prejudice or in any way impair the claim of Merchants and Miners State Bank to the same.

LET JUDGMENT BE ENTERED ACCORDINGLY

Dated: January 6, 1989

JOSEPH R. SCHERKENBACH
Judge of District Court

STATE OF MINNESOTA

IN COURT OF APPEALS

SPAL PARTNERSHIP,

RESPONDENT,

VS.

ORDER
#C1-89-648

CITY OF HIBBING, BY AND THROUGH THE PUBLIC UTILITIES COMMISSION IN AND FOR THE CITY OF HIBBING,

RESPONDENT,

MICHAEL SALMINEN, INTERVENOR,

PETITIONER.

CONSIDERED AND DECIDED BY WOZNIAK, CHIEF J., PARKER, J., AND KALITOWSKI, J.

BASED UPON THE FILE, RECORD AND PROCEEDINGS HEREIN, AND BECAUSE:

1. Petitioner seeks a writ of mandamus to compel the trial court to rule on a application for intervention; and

2. It appears the underlying matter is closed, and that a judgment of dismissal was entered on March 6, 1989; and

3. Petitioner failed to provide copies of the relevant trial court orders, but it appears that his request for intervention has been effectively denied, see Merchants

& Miners State Bank v Spal Enterprise, 391 N.W. 2d 20,22 (Minn Ct App 1986), pet. for rev. denied (Minn. Sept. 22, 1986):

IT IS HEREBY ORDERED the petition for writ of mandamus is denied in its entirety.

Dated: May 2, 1989

BY THE COURT

D.D. Wozniak
Chief Judge

STATE OF MINNESOTA

IN SUPREME COURT

C1-89-648

Spal Partnership,

Respondent,

vs.

City of Hibbing, by and through
the Public Utilities Commission
in and for the City of Hibbing,

Respondent,

Michael A. Salminen, Intervenor,

Petitioner,

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Michael A. Salminen for further review be, and the same is, denied.

Dated: 7-12-89

BY THE COURT

PETER S. POPOVICH
Chief Justice

STATE OF MINNESOTA

IN COURT OF APPEALS

Spal Partnership,

Respondent,

vs.

ORDER
OPINION
C8-89-1005

City of Hibbing, by and through the Public Utilities Commission in and for the City of Hibbing,

Respondent,

vs.

Merchants and Miners State Bank third-party defendant,

Respondent,

Michael A. Salminen,

Appellant.

Considered and decided by Forsberg, Presiding Judge, Huspeni, Judge, and Kalitowski, Judge, without oral argument. Based upon the file, records and proceedings herein, and because:

1. Michael A. Salminen, a partner in respondent Spal Partnership, appeals pro se from a judgment dismissing an action against the respondent City of Hibbing for steam damage to partnership property. This action was brought by the partnership receiver, and dismissed following court approval of a settlement reached by the receiver and the City;

2. Any objections appellant might have had to appointment of the receiver should have been made at the time of that appointment. See Munch v Security State Bank of Owatonna, 175 Minn. 47, 49, 220 N.W. 400, 401 (1928). Appellant lacks standing to challenge this dismissal because the authority to pursue the partnership's claim against the City was specifically given to the receiver at the time of his appointment;

3. The court did not err merely because it ruled on appellant's notice of intervention rather than on a motion for intervention. Nor is this court the proper forum for appellant's complaint that the trial judge violated Minn. Stat. § 546.27 (1988). See Merchants & Miners State Bank v Spal Enterprise, 391 N.W. 2d 20,22 (Minn. Ct. App. 1986), pet. for rev. denied (Minn. Sept. 22, 1986);

4. Denial of appellant's request to intervene was proper. Any interest he might have had in the claim at issue was adequately represented by the receiver. See Minneapolis Star & Tribune Co. v Schumacher, 392 N.W. 2d 197, 207 (Minn. 1986);

5. The court properly quashed subpoenas appellant had served because there was no action pending to serve as a foundation for discovery by

appellant. See Minn. R. Civ. P. 30.01; Minn. R. Civ. P. 26.02(1);

6. The record fails to show appellant has been denied any right to due process. He has been given adequate notice and ample opportunity to respond at the various stages of these proceedings;

7. There is no merit to any of appellant's other arguments; and

8. No written opinion need by prepared where the contents of the statement of decision sufficiently explains our disposition. Minn. R. Civ. App. P. 136.01, subd. 1(a).

IT IS HEREBY ORDERED:

1. The judgment of dismissal is affirmed.

2. Pursuant to Minn. R. Civ. App. P. 136.01, this order opinion will not be published and shall not be cited as precedent.

Dated: Sept. 27, 1989

BY THE COURT

_____

Judge Thomas G. Forsberg

STATE OF MINNESOTA

IN SUPREME COURT

C8-89-1005

Spal Partnership,

Respondent,

vs.

City of Hibbing, by and through
the Public Utilities Commission
in and for the City of Hibbing,

Respondent,

vs.

Merchants and Miners State Bank,
third-party defendant,

Respondent,

Michael A. Salminen,

Appellant.

ORDER

Based upon all the files, records and proceeding herein,

IT IS HEREBY ORDERED that the petition of Michael A. Salminen for further review be, and the same is, denied.

Dated: 11-22-89

BY THE COURT

PETER S. POPOVICH
Chief Justice

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ST. LOUIS SIXTH JUDICIAL DIST.

In Re the Petition of
Richard F. Spearman for Dissolution of Partnership of:

SPAL Enterprise,
a Minnesota Partnership.

No. 85-0064HC

ORDER

DATES OF HEARINGS: March 25, 1988
Hibbing, Minnesota
in open Court

and

April 13, 1988
Hibbing, Minnesota
in chambers

APPEARANCES: Richard E. Prebich for
Petitioner Richard F. Spearman

Donald A. Paquette for
Respondent Michael A. Salminen

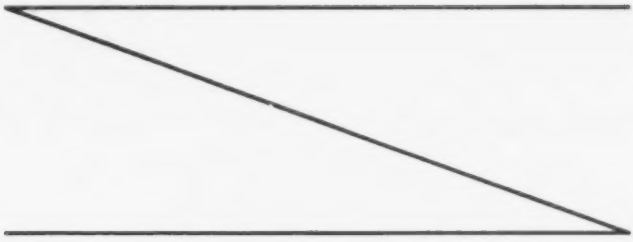
The above-entitled matter came on before the undersigned on the 25th day of March, 1988, at Special Term, upon the Motion of Petitioner, and on the 13th day of April, 1988, upon the Court's Order to Show Cause.

The Court, having heard the arguments of counsel, having reviewed the memorandum affidavits submitted, and being duly advised in the premises, hereby makes the following:

FINDINGS OF FACT

1. Petitioner, Richard F. Spearman, brought this action in December of 1984 to dissolve "Spal Enterprise", a Minnesota Partnership consisting of himself and Michael A. Salminen, and . . . . . .

2 through 8.



9. That the Partners and their respective counsel have agreed that Robert F. Berger shall be appointed to handle the Public Utilities claim and that Mr. Berger's firm, the Trenti Law Firm of Virginia, Minnesota be hired to handle the liquidation of the Partnership's business.

NOW THEREFORE, the Court in consideration of the above facts makes the following

ORDER

It is ORDERED:

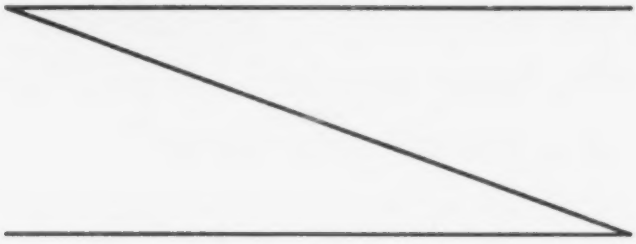
1. That the Partnership known as Spal Enterprise is hereby dissolved.

2. That the report of Auditor John Fort, C.P.A., that is on file with this Court is hereby accepted and approved.

3. That Robert F. Berger and the Trenti Law Firm

of Virginia, Minnesota is hereby appointed as Liquidator/Receiver for the purposes of winding up the affairs of the Spal Enterprise Partnership and that relative thereto is hereby authorized to process the claim against the Hibbing Public Utilities Commission . . . . . .

4 through 10.



Dated: April 25, 1988

JOSEPH R. SCHERKENBACH
Judge of District Court

LIST OF ATTORNEYS SUSPENDED FROM PRACTICE
FOR NONPAYMENT OF REGISTRATION FEE
1987 AND PREVIOUS YEARS
MINNESOTA SUPREME COURT

TO ALL JUDGES AND COURT ADMINISTRATORS:

Enclosed are lists of attorneys who have been suspended for failure to register during the current year and all previous years in accordance with the rules of the Supreme Court, along with the names of attorneys who have been disbarred, suspended, on probation, resigned or have been reinstated by court order from 1982 to present.

The individuals names on this list, or any attorney who does not possess a current "PRACTICING" license, should not be allowed to file papers or appear in your court on behalf of anyone but himself/herself.

(Note: The Court Administrator received and date stamped the list on February 25, 1988. Attorney Paquette appeared on behalf of Petitioner on March 25, 1988. Court's hand-written notes on page H-2)

REPORT NO: RE-10135 PROGRAM ID: MARRP6

ATTORNEYS SUSPENDED NONPAYMENT OF FEES

DATE/TIME: 02-22-88, 1908 PAGE NO: 12

ATTORNEY NAME	SUSPENSION DATE
0081348 CLANDER RAY G	07/21/87
0082144 OLSON MICHAEL A	07/21/87
0083392 OWENS LINDA A	07/21/87
0083847 PAGUETTE DONALD J Sup Ct	07/21/87
0084177 PARSIL WAYNE C	07/21/87
0160854 PASHOS KAY E	07/21/87
0169171 PAULSON GERALD SAMUEL	07/21/87
0085017 PEMBERTON JOHN D	07/21/87
0085406 PETERMAN JOHN M	07/21/87
0086496 PETTERSON JAY R	07/21/87
0086654 PHELPS MARSHALL C JR	07/21/87
0086964 PINGEL G BRIAN	07/21/87

3/25/88 - Advised Paguette fees were not paid verified - fees have not been pd

4/13/88 - fees have not been paid

4/13/88 - 9:35 - fees were just recd in the mail.

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF ST. LOUIS — SIXTH JUDICIAL DIST.

In Re: The Petition of
Richard F. Spearman for Dissolution of Partnership
of SPAL Enterprise, a Minnesota Partnership.

No. 85-0064HC

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing before the Honorable Joseph R. Scherkenbach, one of the judges of the above-named court, at a Special Term thereof, on the 25th day of March, 1988, in the Court House, city of Hibbing, County of St. Louis and State of Minnesota.

APPEARANCES: Richard Prebich and James Clark for Petitioner.

Donald Paquette for Michael Salminen, who also appeared personally.

Wayne R. Kiel
Official Court Reporter
Court House
Hibbing, MN 55746-1680
(218) 262-4841

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ST. LOUIS SIXTH JUDICIAL DIST.

- - - - - - - - - - - - - - - - - - -

In Re: The Petition of
Richard F. Spearman for No. 85-0064HC
Dissolution of Partnership
of SPAL Enterprise, a Minnesota Partnership.

- - - - - - - - - - - - - - - - - - -

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on before the Honorable Joseph R. Scherkenbach, one of the judges of the above-named court, at a Special Term thereof, on the 13th day of April, 1988, in the Court House, City of Hibbing, County of St. Louis, and State of Minnesota.

APPEARANCES

Richard Prebich, Attorney at Law, appeared as counsel for and on behalf of Petitioner.

Donald Paquette, Attorney at Law, appeared as counsel for and on behalf of Michael Salminen, who also appeared.

Wayne Kiel
Official Court Reporter

(Partial)

. . . attorneys for the partnership and get permission to indicate that the court would basically be the arbitrator of our service and if the court accepts a settlement, would also be in a position to approve a settlement so that we do not end up being in a position where we are sued by either one of the partners."

What is your position on that?

MR. PREBICH: Absolutely agreed, your Honor. that's exactly the capacity we think he should hold. It's the Court's decision to review and approve. It's his duty to recommend to the court.

THE COURT: Mr. Paquette?

MR PAQUETTE: Mr. Salminen has indicated to me that I should not agree to that. I guess I would call it to the Court's attention that we have - - we do oppose the motion to appoint Mr. Berger. And I guess we'll leave it at that. . . . . .

TRENTI LAW FIRM
Attorneys and counselors
1000 Lincoln Building
P.O. Box 958
Virginia, Minnesota 55792
(218) 749-1962

December 7, 1988

Mr. Richard E. Prebich
Attorney at Law
1932 Second Avenue East
Hibbing, Minnesota 55746

Mr. Richard Spearman
Omnidyne corporation
2519 First Avenue
Hibbing, Minnesota 55746

Mr. Donald Paquette
Attorney at Law
2000 Aquila Avenue North
Golden Valley, Minnesota 55427

Mr. Michael Salminen
P.O. Box 353
Hibbing, Minnesota 55746

Re: Court File No. 85-0064HC
SPAL Enterprise

Gentlemen:

Enclosed herewith please find copy of Notice of Motion and Motion in connection with the above entitled matter which is herewith served upon each of you by mail.

Very truly yours,

Robert F. Berger

RFB: bro
Enc.
cc: Dennis L. O'Toole

STATE OF MINNESOTA
COUNTY OF ST. LOUIS

DISTRICT COURT
SIXTH JUDICIAL DIST.

In Re: The Petition of
Richard F. Spearman for
Dissolution of Partnership
of:

SPAL Enterprise,
a Minnesota Partnership.

Court File No:
85-0064HC
NOTICE OF
MOTION AND
MOTION

YOU WILL PLEASE TAKE NOTICE That on the 23rd day of December, 1988, at 9:00 a.m. or as soon thereafter as counsel can be heard the undersigned will move the Court for an Order to submit certain monies to the Court and for an Order to relieve the undersigned of all duties as Liquidator/Receiver.

This Motion is based upon the files, records, and proceedings herein and the attached Affidavit in support of the Motion.

Dated this 7th day of December, 1988.

THE TRENTI LAW FIRM
1000 Lincoln Building
Virginia, Minnesota 55792
(218) 749-1962
Attorneys for SPAL Partnership
by Court Order

By Robert F. Berger

STATE OF MINNESOTA REGISTER OF ACTION

St. Louis County DC Court

Case Number: 88-11246

Case Type: Civ

PLAINTIFF NAME:

Spal Partnership, a Minnesota partnership in liquidation

DEFENDANT NAME:

City of Hibbing, by and through the Public Utilities commission in and for the City of Hibbing

ATTORNEY/PHONE:

Robert F. Berger - 600

Dennis L. OToole - 6070

THIRD PARTY:

Intervener - Michael Salminen
Cross-Claim

Opening Fee: $65.00, Dec. 13, 1988

Mike Salminen: $65.00 Dec. 22, 1988
SUBP. 3.00 Dec. 27, 1988
SUBP. 3.00 Dec. 29, 1988

DATE	ACTION SUMMARY
Dec. 8, 1988	Notice of Motion and motion filed with Affidavit of Robert Berger.
Dec. 13, 1988	Letter of Dennis L. OToole, filed.

Third Party Summons, filed.

Answer, filed.

Dec. 22, 1988 Michael A. Salminen's Notice of Intervention; Reasons for Entitlement to Intervention (8 pages) with/Exhibits A-L.

Michael A. Salminen's Cross-Claim.

Service papers, filed.

Dec. 22, 1988 letter of Michael Salminen - request for continuance.

Dec. 23, 1988 Hearing before the Court, the Honorable Joseph R. Scherkenbach presiding.

$1600.00 check and $16,500.00 check received by the court and deposited in interest bearing account.

Memorandum Supporting Third-Party Defendants Position at December 23, 1988 Motion filed.

Dec. 23, 1988 Affidavit of service, filed.

Dec. 27, 1988 Subpoena issued to Michael Salminen.

Dec. 29, 1988 Subpoena returned w/ service and filed.

Subpoena issued to Michael Salminen.

copy of letter of Michael A. Salminen dated 12/29/88, filed.

Dec. 30, 1988 Subpoena filed w/ service.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ST. LOUIS SIXTH JUDICIAL DIST.

Spal Partnership, a Minnesota partnership in liquidation,

Plaintiff,

MICHAEL A. SALMINEN'S NOTICE OF INTERVENTION

vs.

City of Hibbing, by and through the Public Utilities Commission in and for the City of Hibbing,

Court file: 88-11246

Defendant,

vs.

Merchants and Miners State Bank,
Third-Party Defendant.

TO: SPAL PARTNERSHIP, and its attorney, ROBERT F. BERGER; CITY OF HIBBING, and its attorney, DENNIS L. O'TOOLE; MERCHANTS AND MINERS STATE BANK, and its attorney, DAVID T. STALL.

PLEASE TAKE NOTICE that applicant, Michael A. Salminen, hereby intervenes, pursuant to Rule 24.01, Minnesota Rules of Civil Procedure. He claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter

impair or impede his ability to protect that interest. Applicant's interest is not adequately represented by existing parties to the legal action.

Applicant states herein that in the absence of objection by an existing party to the action within; thirty days after service thereof upon the party such intervention shall be deemed to have been accomplished.

Dated this 19th day of December, 1988.

MICHAEL A. SALMINEN
P.O. Box 353
Hibbing, Minnesota 55746
(218) 263-6477

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ST. LOUIS SIXTH JUDICIAL DIST.

- -

Spal Partnership, a Minnesota Partnership in liquidation,

Plaintiff,

vs.

City of Hibbing, by and through the Public Utilities commission in and for the City of Hibbing,

TRANSCRIPT OF PROCEEDINGS

No: 88-11246

Defendant,

vs.

Merchants and Miners State Bank,

Third-Party Defendant,

and

Michael A. Salminen,

Intervenor,

vs.

City of Hibbing, by and through the Public Utilities Commission in and for the City of Hibbing,

Defendant.

- -

December 23, 1988
Wayne R. Kiel, Official Reporter
Court House, Hibbing, MN 55746-1680

Appendix N

The above-entitled matters came on for hearing before the Honorable Joseph R. Scherkenbach, one of the judges of the above-named court, at a Special Term thereof, on 23rd day of December, 1988, in the court House, City of Hibbing, County St. Louis and State of Minnesota.

APPEARANCES:

Robert F. Berger by appointment of the Court.
Richard Prebich for Petitioner Spearman.
Dennis L. O'Toole for city of Hibbing.
David T. Stall for Merchants & Miners Bank.

Friday Morning
December 23, 1988
9:00 a.m.

(The Court directed the Bailiff to check the courthouse for the presence of Mr. Michael A. Salminen.)

THE BAILIFF: Your Honor, he was here absolutely this morning, but we just don't find him around any place right now.

THE COURT: He's not here? Okay. We'll proceed first of all in this petition of Richard F. Spearman for dissolution. We'll proceed on whether or not this $16,500.00 should be deposited with the Court. Mr. Berger?

MR. BERGER: If it please the Court, it has been my responsibility as commissioned by the Court to do

two things in this matter. And the first was to wind up the sale of personal property of the partnership. I have done that; to investigate, commence an action within the statute of limitations and to pursue an action to collect damages for property that the partnership had suffered during the partnership's existence to a piece of real estate that was located here in Hibbing. And I have done that. And I have petitioned the Court for authority to settle pursuant to an offer of settlement that has been made. The Court has granted that authority to me, and I have arranged for that settlement.

And that brings us basically up to date, with this exception. After the offer of settlement was made and accepted and approved by the Court, Mr. Stall, who represents a creditor, Merchants and Miners, served a garnishment. And the exact legal procedures I don't know because I don't know how you collect bills. But I do know this, that Mr. Stall served some papers on Mr. O'Toole which prevents Mr. O'Toole from delivering the check to me. . . . . .

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ST. LOUIS SIXTH JUDICIAL DIST.

- -

Spal Partnership, a Minnesota partnership in liquidation,

Plaintiff,

File No: 88-11246

vs.

ORDER AND MEMORANDUM

City of Hibbing, by and through the Public Utilities Commission in and for the City of Hibbing,

Defendant,

vs.

Merchants and Miners State Bank,

Third-Party Defendant.

- -

The above-entitled matter came before the undersigned on December 22, 1988 upon Mr. Michael A. Salminen's Motion to Intervene pursuant to Minnesota Rule of Civil Procedure 24.01. No appearances were made by Mr. Salminen or any party.

The court, having reviewed the file, having reviewed the memorandum submitted and the applicable law, now makes its Order:

It is ORDERED, That the Motion to Intervene of

Mr. Michael A. Salminen is hereby denied.

The attached Memorandum is made a part hereof.

Dated: January 9, 1989

JOSEPH R. SCHERKENBACH
Judge of the District Court

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ST. LOUIS SIXTH JUDICIAL DIST.

Spal Partnership, a Minnesota partnership in liquidation,

Plaintiff,

vs.

City of Hibbing, by and through the Public Utilities commission in and for the City of Hibbing

Defendant,

vs.

Merchants and Miners State Bank,

Third-Party Defendant,

and

Michael A. Salminen,

Intervener,

vs.

City of Hibbing, by and through the Public Utilities Commission in and for the City of Hibbing,

Defendant.

MICHAEL A. SALMINEN'S AFFIDAVIT

Court file 88-11246

STATE OF MINNESOTA)
)ss
COUNTY OF ST. LOUIS)

MICHAEL A. SALMINEN, first being sworn upon an oath, states:

1. He is an intervening party and competent to testify to the matters herein.

2. Attorney for the City of Hibbing, Dennis L. O'Toole, opened the above-entitled legal action when he filed papers with the Court Administrator in Hibbing, Minnesota, on December 13, 1988. Intervening affiant filed his Notice of Intervention with the Administrator on December 22, 1988. The St. Louis County Sheriff filed affiant's subpoenas and Notices of Taking Depositions on the 29th and 30th of December, 1988. Discovery testimony to be taken from Spal partner/Public Utilities Commissioner Richard F. Spearman, and Public Utilities Commission Secretary David Strafaccia, will eliminate surprise and will achieve substantial justice for affiant. (Greyhound Lines, Inc. v Miller (CA Mo 1968) 402 F 2d 134) (Exh. C)

Affiant has the right to intervene, pursuant to Rule 24.01, Minnesota Rules of Civil Procedure. Pursuant to Rule 24.03, affiant served upon all parties to the action his Notice of Intervention stating that in the absence of objection by an existing party to the action within thirty days after service thereof upon the party such intervention shall be deemed to have

been accomplished. NO OBJECTION from an existing party has been served upon intervener. Michael A. Salminen has not filed a motion to intervene, because there be no objection to date. The Honorable Joseph R. Scherkenbach issued an Order dated January 9, 1989, based upon a motion that does not exist. (Exhibit B) Judge Scherkenbach also issued an Order dated January 6, 1989, showing court file #85-0064HC & #88-11246. (Exh. A) Both Orders constitute an overwhelming abuse of power, and violation of the Minnesota Rules of civil Procedure; Minnesota Statutes, Chapter 323; the Spal Enterprise Partnership Agreement; and Amendments and XIV of the Constitution of the United States of America. Amendment XIV states in part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws".

3. That it be the duty of the Honorable Joseph R Scherkenbach, on his own initiative, to immediately rectify his mistakes by taking appropriate steps that will nullify his acts that constitute an overwhelming

and discriminatory prejudicial administration of justice.

4. That a copy of this affidavit and attached exhibits A, B & C have been served via U.S. mail, from Hibbing, Minnesota, upon the following attorneys, representing parties to this legal action:

Dennis L. OToole, P.O. box 20, Grand Rapids, Minnesota 55744
David T. Stall, 330 South 3rd Street, Virginia, Minnesota 55792
Trenti Law firm, P.O. Box 958, Virginia, Minnesota 55792

Because United States Constitutional law has been violated, a copy has been sent to:

Jerome Arnold, United States Attorney, Room 234, United States Courthouse, Minneapolis, Minnesota 55401

Further Affiant Sayeth Not.

Subscribed and sworn to
before me on this 11th day
of January, 1989.

Sharon L. Marks
Notary Public

MICHAEL A. SALMINEN
P.O. Box 353
Hibbing, MN 55746
(218) 263-6477

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ST. LOUIS SIXTH JUDICIAL DIST.

- - - - - - - - - - - - - - - - - -

Spal Partnership, a Minnesota partnership in liquidation,

Plaintiff,

vs.

city of Hibbing, by and through the Public Utilities Commission in and for the City of Hibbing,

Defendant,

MICHAEL A. SALMINEN'S AFFIDAVIT

Court file 88-11246

vs.

Merchants and Miners State Bank,

Third-Party Defendant,

and

Michael A. Salminen,

Intervenor,

vs.

City of Hibbing, by and through the public Utilities Commission in and for the City of Hibbing,

Defendant.

- - - - - - - - - - - - - - - - - -

STATE OF MINNESOTA)
)ss
COUNTY OF ST. LOUIS)

MICHAEL A. SALMINEN, first being sworn upon an oath, states:

1. He is competent to testify to the matters herein.

2. Attorney Richard E. Prebich of the law firm Abate, Wivoda, Clark, Prebich & Fena, has served a Notice of Motion and Motion, and Affidavit of Richard F. Spearman, upon affiant, in the above-entitled legal action.

3. That Richard F. Spearman is not a party to the instant legal action. Attorney Richard E. Prebich does not represent Spal Partnership in 88-11246. The Honorable Joseph R. Scherkenbach appointed Robert F. Berger to represent the partners in the matter.

4. The act of Richard E. Prebich's serving and filing papers for Richard F. Spearman in legal action 88-11246, constitutes <u>fraud upon the court</u> by Richard F. Spearman and the law firm of Abate, Wivoda, Clark, Prebich and Fena. If the court chooses to hear the sham, late served Prebich/Spearman motion set for January 20, 1989, in 88-11246, then affiant will allege <u>fraud by the court.</u>

5. Affiant will take the deposition of Richard F. Spearman to make discovery that will substantiate and clarify affiant's issue of bad faith as alleged in his

claim against the City of Hibbing, by and through the Public Utilities Commission, its Commissioners, and its insurer, Transamerica Insurance Company.

> "The purpose of modern discovery is to narrow the issues, to eliminate surprise, and to achieve substantial justice". (Greyhound Lines, Inc. v Miller CA Mo 1968) 402 F 2d 134)

> "The purpose of rules governing discovery is to clarify and confine the issues to be litigated and to reveal to the parties and the court the existence or whereabouts of facts relative to those issues". (Carlson Co., Inc. v Sperry & Hutchinson Co. (1974 DC Minn) F Supp 374)

Pursuant to Notice of Taking Deposition of Richard F. Spearman, which was served upon Mr. Spearman and parties to the action, affiant will appear, with court reporter, at the designated time and place on the 30th day of January, 1989.

6. Affiant hand delivered a copy of this affidavit for service upon the following attorneys:

> Trenti Law Firm, Attorneys for Spal Partnership.
> Dennis L. O'Toole, Attorney for City of Hibbing.
> David T. Stall & Mark A. Meyer, Attorneys for M&M State Bank.

Affiant's civil rights have been violated, pursuant to Amendment XIV, Section 1, United States Constitution, in regard to the instant matter, and legal actions C84-0558 & 85-0064HC, from whence

this matter originates. Therefore, affiant mailed a copy of this affidavit to: Jerome Arnold, United States Attorney, Minneapolis, Minnesota.

7. Affiant again requests the Court, on its own initiative, to nullify its overwhelmingly prejudicial Orders issued on the 6th and 9th of January, 1989, in legal actions 88-11246 & 85-0064HC. It be utterly preposterous that the Court dismissed legal action 88-11246 only 24 days after opening of the file with the Court Administrator, and 15 days after affiant filed his Notice of Intervention. The Honorable Joseph R. Scherkenbach again demonstrates overwhelming blatant abuse of power in his repeated attempts to deny affiant his right to make discovery.

8. The Transamerica check in the amount of #16,500.00 is an inadequate settlement for steam damages suffered by Spal Enterprise partnership property. The deposition of Richard F. Spearman will so prove.

Further Affiant Sayeth Not.

MICHAEL A. SALMINEN

Subscribed and sworn
to before me on this
17th day of January, 1989.

Dawn R. Eichholz
Notary Public

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF ST. LOUIS SIXTH JUDICIAL DIST.

Spal Partnership, a Minnesota partnership in liquidation,

Plaintiff,

vs.

Court File: 88-11246

City of Hibbing, by and through the Public Utilities Commission in and for the City of Hibbing,

ORDER

Defendant,

vs.

Merchants and Miners State Bank

Third-Party Defendant.

The above-entitled matter came on before the undersigned Judge of District Court on the 27th day of January, 1989 at the St. Louis County Courthouse in Hibbing, Minnesota, and the parties appearing as follows: Dennis L. O'Toole appearing for the City of Hibbing; and no appearance made by Michael A. Salminen, to whom written notice of said hearing had duly been made; and the Court being advised in the premises, does make the following:

ORDER

1. That all discovery initiated by Michael A.

Salminen in the above-referenced matter, including but not limited to the deposition of David Strafaccia noted for January 30, 1989, and any subpoenas attendant thereof, are hereby quashed;

2. That Michael A. Salminen pay to Defendant attorney fees and costs in the amount of $400.00;

3. That Defendant and its agents, subdivisions, employees and attorneys shall be permitted at all times in the future to ignore and disregard, with no penalty or sanction to them, any discovery or purported discovery relating to the claims which are the subject matter of this lawsuit and which discovery is initiated by Michael A. Salminen or any individual acting or purporting to act on his behalf;

4. That under the circumstances herein, it is determined that written notice given by Defendant to Michael A. Salminen and the parties herein is sufficient.

Dated: January 31, 1989

BY THE COURT:

JOSEPH R. SCHERKENBACH
Judge of District Court

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ST. LOUIS SIXTH JUDICIAL DIST.

Spal Partnership, a Minnesota partnership in liquidation,

Plaintiff,

vs.

City of Hibbing, by and through the Public Utilities Commission in and for the City of Hibbing,

Defendant,

vs.

Merchants and Miners State Bank,

Third-Party Defendant,

and

Michael A. Salminen,

Intervenor,

vs.

City of Hibbing, by and through the Public Utilities Commission in and for the City of Hibbing,

Defendant.

NOTICE OF MOTION AND MOTION

Court File: 88-11246

TO: SPAL PARTNERSHIP, and its attorney, PATRICK J. ROCHE JR.; MERCHANTS AND MINERS STATE BANK, and its attorney, DAVID T. STALL; CITY OF HIBBING,and its attorney, DENNIS L. O'TOOLE.

YOU WILL PLEASE TAKE NOTICE that on the 3rd day of March, 1989, at 8:30 a.m., or as soon thereafter as counsel may be heard, at the St. Louis County Courthouse in Hibbing, Minnesota, Intervener Michael A. Salminen will move the Court for an Order as follows:

1. Permitting Michael A. Salminen to intervene in the above-entitled legal action.

2. Awarding moving party pro se allowance and costs in the amount of $400.00, assessed against City of Hibbing and attorney Dennis L. O'Toole.

This motion is based upon Memorandum and Exhibits included herein, all of the papers files and records in the instant matter, Intervener's Notice of Intervention filed December 22, 1988, and all of the papers, files, records, and transcripts of depositions in District Court files C84-0558 and 85-0064HC, from whence the instant matter originates.

According to Rule 2.1, Special Rules of the Sixth Judicial District, the date for service and filing of a responsive brief shall be not less than 10 days from service of the motion, plus three days if service is made by mail, and at least two full days before the date for hearing.

Dated this 9th day of February, 1989.

MICHAEL A. SALMINEN
P.O. Box 353
Hibbing, Minnesota 55746
(218) 263-6477

SAINT LOUIS COUNTY

Court Administrator - 100 North 5th Avenue West, Duluth, Minnesota 55802

Joseph M. Lasky
Court Administrator

March 17, 1989

Mr. Michael A. Salminen
P.O. Box 353
Hibbing, Mn. 55746

RE: Spal vs. City of Hibbing
Court file #88-11246

Dear Mr. Salminen:

Pursuant to your letter of 3/14/89, the Court has directed me to advise you that all orders to be issued in this matter have been issued and filed.

I am enclosing copies of the Order issued on January 6, 1989; the Order and Memorandum issued on January 9, 1989; and the Order for Judgment and Judgment of Dismissal entered and filed on March 6, 1989.

Yours very truly,

JOSEPH M. LASKY
COURT ADMINISTRATOR

BY: Jean E. Paoletti
Deputy Court Administrator

Encs.